

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

In the Matter of the OMAK WAREHOUSE AND  
STORAGE COMPANY, a Corporation, Bankrupt.  
OMAK WAREHOUSE AND STORAGE COMPANY,  
a Corporation, and JOHN SCOTT and W. H.  
DICKSON,

Appellants,

vs.

C. E. BLACKWELL & COMPANY, a Corporation,  
OMAK TRADING COMPANY, a Corporation,  
and VAL MIDDLETON,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court  
for the Eastern District of Washington,  
Northern Division.

FILED  
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F. D. MONCKTON,  
CLERK.



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Circuit Court of Appeals  
For the Ninth Circuit.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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### **Names and Addresses of Solicitors of Record.**

P. D. SMITH, Okanogan City, Washington, Attorney for Appellant.

CHAS. H. LEAVY, Federal Building, Spokane, Washington, Attorney for Appellant.

FABIAN B. DODDS, Old National Bank Building, Spokane, Washington, Attorney for Petitioner.

EUGENE D. CLOUGH, Omak, Washington, Attorney for Petitioner. [2\*]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Alleged Bankrupt.

### **Creditors' Petition.**

To the Honorable Judge of the District Court of the United States for the Eastern District of Washington:

The petition of C. E. Blackwell & Co., a corporation organized and doing business under the laws of the State of Washington, having its principal business at Okanogan, Washington, and Omak Trading Company, a corporation, organized and doing business under the laws of the State of

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\*Page-number appearing at foot of page of original certified Transcript of Record.

Washington, having its principal place of business at Omak, Washington, and Val. Middleton of Omak, Washington, respectfully shows:

First: That said Omak Warehouse & Storage Company, a corporation, organized and existing under the laws of the State of Washington, for more than six months immediately preceding the filing of this petition, has been principally engaged in the business of warehousing and storage of fruit, and that its principal place of business is at Omak, Okanogan County, Washington; that the said Omak Warehouse & Storage Company, a corporation, is not a wage-earner or person engaged principally in farming or tilling the soil, and is not a municipal railroad, insurance or banking corporation and owes debts to the amount of \$1,000.00 or over.

Second: That your petitioners are creditors of said alleged bankrupt, having provable claims amounting in the aggregate in excess of securities held by them to the sum of \$500.00.

Third: That the nature and amount of your petitioners' claims are as follows:

(2) The claim of your petitioner, C. E. Blackwell & Co., a [3] corporation, is as follows: Goods, wares and merchandise sold and delivered to the alleged bankrupt above named, evidenced by a certain promissory note amounting to the sum of \$775.97, dated August 9th, 1921, due thirty days after said date, bearing interest at the rate of ten per cent per annum.

(b) The claim of your petitioner, Omak Trad-



ing Company, a corporation, is as follows: Goods, wares and merchandise sold and delivered to the alleged bankrupt above named, evidenced by a certain promissory note amounting to the sum of \$192.00, dated November 1st, 1920, payable on demand and bearing interest at the rate of ten per cent per annum.

(c) The claim of your petitioner, Val Middleton, is as follows: Goods, wares and merchandise and labor furnished to the said alleged bankrupt by your said petitioner at the special instance and request of said alleged bankrupt during the year 1920.

Fourth: Your petitioners further show that the said alleged bankrupt is insolvent and within four months next preceding the date of the filing of this petition, and while insolvent, committed an act of bankruptcy as follows: In the Superior Court of the State of Washington in and for the County of Okanogan, on the 12th day of January, A. D. 1921, in an action entitled "F. B. Dallam, Plaintiff, vs. Omak Warehouse & Storage Company, a corporation, Defendant," receivers were appointed by order of said Court on the grounds of the insolvency of said corporation, and thereupon all of the assets and properties of said corporation were put in charge of said receivers. That the fact of said insolvency was not denied but was admitted by said corporation in said proceeding.

WHEREFORE your petitioners pray that service of this petition with a subpoena may be made the Omak Warehouse & Storage Company, a corpora-

tion, as provided in the acts of Congress relating to bankruptcy, and that it may be adjudged by this Court to be a bankrupt within the purview of said acts. [4]

C. E. BLACKWELL & CO., INC.

By L. R. MULLEN,

Act. Treas.

OMAK TRADING CO.

By R. E. ELLINGSWORTH,

Treas.

VAL MIDDLETON,

Petitioners.

EUGENE D. CLOUGH,

WM. O'CONNOR,

Attorneys for Petitioners.

State of Washington,  
County of Okanogan,—ss.

L. R. Mullen, being first duly sworn, deposes and says that he is the treasurer of C. E. Blackwell & Co., a corporation, one of the petitioning creditors mentioned and described in the foregoing petition, and makes solemn oath that the statements of fact contained in the foregoing petition are true, according to the best of his knowledge, information and belief.

L. R. MULLEN.

Subscribed and sworn to before me this 20 day of April, 1921.

GEORGE W. LEE,

Notary Public in and for the State of Washington,  
Residing at Omak, Wash.

State of Washington,  
County of Okanogan,—ss.

R. E. Ellingsworth, being first duly sworn, deposes and says that he is the treasurer of Omak Trading Company, a corporation, one of the petitioning creditors mentioned and described in the foregoing petition, and makes solemn oath that the statements of fact contained in the foregoing petition are true, according to the best of his knowledge, information and belief.

R. E. ELLINGSWORTH.

Subscribed and sworn to before me this 20th day of April, 1921.

E. D. CLOUGH,  
Notary Public in and for the State of Washington,  
Residing at Omak, Wash. [5]

State of Washington,  
County of Okanogan,—ss.

Val Middleton, one of the petitioning creditors mentioned and described in the foregoing petition, does hereby make solemn oath that the statements of fact contained in the foregoing petition are true, according to the best of his knowledge, information, and belief.

VAL MIDDLETON.

Subscribed and sworn to before me this 20th day of April, 1921.

E. D. CLOUGH,  
Notary Public in and for the State of Washington,  
Residing at Omak, Washington.

Filed in the U. S. District Court, Eastern District of Washington. April 22, 1921. Wm. H. Hare, Clerk. By H. J. Dunham, Deputy. [6]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Alleged Bankrupt.

**Answer to Creditors' Petition.**

Comes now the Omak Warehouse & Storage Company and John Scott and W. H. Dickson, receivers thereof, and for answer to the petition herein say:

I.

That they deny each and every allegation, matter and thing as a whole thereof therein contained except as is herein specifically admitted.

II.

Admit paragraphs I, II and III of said petition.

III.

Further answering paragraph IV of said petition, said Omak Warehouse & Storage Company and John Scott and W. H. Dickson, receivers thereof, say that in the Superior Court of Okanogan County, Washington, in the case of F. B. Dallam, Plaintiff, vs. Omak Warehouse & Storage Company, a Corporation, Defendant, and on the 2d day of December, 1920, said Court in said cause duly appointed N. E.

Whitworth and John Scott as receivers of said company, and pursuant to said order of appointment, did on the 2d day of December, 1920, take the oath of office required by law, and on the 3d day of December, 1920, filed in said court and cause the bond required by law and the order of said Court, and took possession of the property and assets of said company, a copy of which order, oath and bond is attached hereto marked, [7] respectively, Exhibits "A," "B" and "C" and made a part hereof; that on December 7, 1920, said Court in said cause made a further order continuing the said order of December 2d, 1920, in force and fixing another day of hearing, a copy of which order is attached hereto marked Exhibit "D" and made a part hereof; that on December 10, 1920, the attorneys for the plaintiff and defendant in said cause of F. B. Dallam, Plaintiff, vs. Omak Warehouse & Storage Company, a Corporation, Defendant, signed and filed in said cause a stipulation which omitting the caption was and is in words and figures following, to wit:

"It is hereby stipulated by and between the plaintiff and defendant in the above-entitled action that the hearing on the show cause order heretofore issued and served in this cause be continued to Friday, December 17, 1920, at 10:00 o'clock A. M. and the said order appointing temporary receivers be continued in force until the further order of the court.

Dated this 10th day of December, 1920.

SMITH & BROWN,

Attorneys for Plaintiff.

EUGENE D. CLOUGH,

Attorney for Defendant.”

That said cause was further continued by oral stipulation of the parties until January 12th, 1921, when said Court in said cause appointed permanent receivers for said defendant company, which said order of appointment is attached hereto marked Exhibit “E” and made a part of this answer, and said receivers qualified and have ever since continued to act; that more than four months expired between the date of appointing temporary receivers for said Omak Warehouse & Storage Company, and the date of filing the involuntary petition herein.

WHEREFORE, said Omak Warehouse & Storage Company and John Scott and W. H. Dickson, Receivers thereof, pray that the involuntary petition be dismissed and the prayer thereof denied.

P. D. SMITH,

Attorney for Omak Warehouse & Storage Company, and John Scott and W. H. Dickson, Receivers. [8]



**Exhibit "A."**

In the Superior Court of Okanogan County, State  
of Washington.

F. B. DALLAM,

Plaintiff,

vs.

OMAK WAREHOUSE & STORAGE COMPANY,  
a Corporation,

Defendant.

**ORDER APPOINTING A RECEIVER.**

It fully appearing to the Court from the complaint of the plaintiff duly verified that the defendant is indebted to plaintiff and that the defendant is unable to pay its just debts in due course as they may become due and is therefore insolvent, and it further appearing to the Court that an emergency exists for the appointment of a temporary receiver without notice,

NOW, THEREFORE, it is hereby ordered that John Scott and N. E. Whitworth be and are hereby appointed temporary receivers and is hereby authorized and empowered to take charge of the property and assets of the defendant, Omak Warehouse & Storage Company, upon his taking the oath and getting a bond conditioned according to law in the sum of \$1,000.00.

And it is further ordered that the defendant be and appear before this court at the courtroom thereof in the town of Okanogan, on Tuesday, the

7th day of December, 1920, at 10:00 o'clock A. M. of said day, then and there to show cause, if any there be, why the appointment of said receiver should not be made permanent during the pendency of this action and until the further order of this court.

Done in open court this 2d day of December, 1920.

C. H. NEAL,  
Judge.

Filed Dec. 2d, 1920. Margaret E. Ward,  
Clerk. [9]

**Exhibit "B."**

In the Superior Court of the State of Washington  
in and for Okanogan County.

No. —.

F. B. DALLAM,

Plaintiff,

vs.

OMAK WAREHOUSE & STORAGE COMPANY,  
Defendant.

**RECEIVER'S BOND.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, N. E. Whitworth and John Scott, as principal, and the National Surety Company, a corporation organized under the laws of the State of New York, and authorized to transact business of surety in the State of Washington, as surety, are held and firmly bound unto the State of Washing-



ton in the just and full sum of One Thousand Dollars, for the payment of which, truly to be made, we hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed and dated this 3d day of December, 1920.

THE CONDITION of the foregoing bond is such that, whereas, in the above-entitled action and by the above-entitled court, on the 2d day of December, 1920, the above-named principal was appointed receiver of the Omak Warehouse & Storage Company, a corporation, with authority and instruction to take charge of the property and assets of the Omak Warehouse & Storage Company, and hold and dispose of the same, under the order of the Court, and has been directed to give a bond to said State of Washington in the sum of One Thousand Dollars, according to law.

NOW, THEREFORE, if the above-bounden principals shall and will faithfully discharge the duties of receiver in said action and shall and will obey the orders of the Court therein, then this obligation shall be void, otherwise be and remain in full force and effect.

N. E. WHITWORTH.

JOHN SCOTT.

NATIONAL SURETY COMPANY OF  
NEW YORK.

By P. D. SMITH,

Attorney in Fact.

Attest: W. C. GRESHAM,

Attorney in Fact.

Filed Dec. 3, 1920. Margaret E. Ward, Clerk.  
[10]

**Exhibit "C."**

In the Superior Court of Okanogan County, State  
of Washington.

F. B. DALLAM,

Plaintiff,

vs.

OMAK WAREHOUSE & STORAGE COMPANY,  
a Corporation,

Defendant.

**OATH OF OFFICE.**

State of Washington,  
County of Okanogan,—ss.

N. E. Whitworth and John Scott, being first duly sworn, each for himself and not one for the other, deposes and says that he will support the constitution and the laws of the United States and of the State of Washington, and will perform the duties of receiver of the Omak Warehouse & Storage Company to the best of his ability.

H. E. WHITWORTH.

JOHN SCOTT.

Subscribed and sworn to before me this 2d day  
of December, 1920.

[Seal]

P. D. SMITH,

Notary Public Residing at Okanogan, Wash.

Filed Dec. 3, 1920. Margaret E. Ward, Clerk.  
[11]

**Exhibit "D."**

In the Superior Court of Okanogan County, State  
of Washington.

No. 4570.

F. B. DALLAM,

Plaintiff,

vs.

OMAK WAREHOUSE & STORAGE COMPANY,  
a Corporation,

Defendant.

**ORDER.**

Now, on this day, it appearing to the Court that heretofore under date of December 2d, 1920, in the above-entitled cause, by order of the Court, John Scott and N. E. Whitworth were duly appointed temporary receivers of the above-named defendant corporation, authorized and empowered to take charge of the property and assets of the defendant upon their taking the oath and furnishing a bond in the sum of \$1000.00, and it appearing that the said named persons have duly qualified as such temporary receivers, and the said order dated December 2, 1920, having fixed this date, to wit, December 7th, 1920, at 10:00 o'clock A. M. as the time and place when the said defendant should appear and show cause, if any there be, why the appointment of the said receivers should not be made permanent during the pendency of this action and it appearing at this time that no proper service of the said order

and notice of such appointment of temporary receivers has been made upon the said defendants,

NOW, THEREFORE, upon oral application of the plaintiff, appearing by his attorneys, Messrs. Smith & Brown and Mr. Fred Kemp, and the Court being fully advised,

It is hereby ordered that the appointment of the said John Scott and N. E. Whitworth as temporary receivers of said defendant corporation be and the same is hereby continued in force and the said order heretofore made on December 2d, 1920, in this cause is continued in force and effect until the hearing of the same shall be had as herein further specified. [12]

And it is therefore hereby ordered that the defendant, the Omak Warehouse & Storage Company, a corporation, be and it is hereby required to appear at this court at the courtroom thereof in the town of Okanogan, on Saturday, the 11th day of December, 1920, at the hour of 9:30 A. M. of said day then and there to show cause, if any there be, why the appointment of the said receivers should not be made permanent during the pendency of this action and until further order of this court.

And it is ordered that the said hearing may be upon oral documentary and written proof.

Done in open court this 7th day of December, 1920.

C. H. NEAL,  
Judge.

Filed Dec. 7, 1920. Margaret E. Ward, Clerk.  
By Will L. Wright, Deputy. [13]

**Exhibit "E."**

In the Superior Court of Okanogan County, State  
of Washington.

F. B. DALLAM,

Plaintiff,

vs.

OMAK WAREHOUSE & STORAGE COMPANY,  
a Corporation,

Defendant.

**ORDER APPOINTING RECEIVERS.**

This cause is regularly before the Court on the application of the plaintiff for the appointment of a receiver or receivers of the property and assets of the above-named defendant company, due notice of said application having heretofore been given and it fully appearing to the Court that the defendant is indebted to the plaintiff and other persons and corporations in large amounts which is due and which the defendant is unable to pay in due course; and it further appearing to the Court that the defendant is the owner of a large amount of property and assets, and that a receiver or receivers should be appointed by this Court to take charge of the property and assets of said defendant company and hold and dispose of the same under the orders and directions of this Court and to pay the debts of said defendant company allowed by the Court as rapidly as possible, and it further appearing to the Court that John Scott and W. H. Dixon, both of Omak.

Washington, are qualified and suitable and proper persons to be appointed by the Court as such receivers,—

NOW, THEREFORE, by reason of the law and premises, it is hereby ordered and adjudged that said John Scott and W. H. Dixon be and are hereby appointed permanent receivers of the property and assets of said defendant company to serve during the pendency of this action and until the further order of the Court. And it is further ordered that said receivers take the oath required by [14] law and enter into bond payable to the State of Washington, conditioned according to law in the penal sum of \$10,000.00.

And *it further* ordered that said receivers give notice of their appointment as such by publication for two consecutive weeks in the “Omak Chronicle,” a weekly newspaper of general circulation printed and published at Omak, Washington.

And it is further ordered that said John Scott and W. H. Dickson, as such receivers, forthwith take charge of all the property and assets of said defendant company, and as speedily as possible collect all accounts, demands and bills receivable of every name and nature, due or owing to said defendant company or in which it has any interest by contract or otherwise, and to that end said receivers are hereby authorized to bring and prosecute and all actions or proceedings, without further application to this court.



Done in open court this 12th day of January, 1921.

C. H. NEAL,  
Judge.

Filed Jan. 12, 1921. Margaret E. Ward, Clerk.  
[15]

United States of America,  
Eastern District of Washington,—ss.

O. M. Forkel, being first duly sworn, on his oath deposes and says that he is secretary-treasurer of the Omak Warehouse & Storage Company and makes this verification on its behalf; that he has read the foregoing answer, knows the contents thereof and the allegations therein contained are true as he verily believes.

O. M. FORKEL.

Subscribed and sworn to before me this 3d day of May, 1921.

P. D. SMITH,  
Notary Public, Residing at Okanogan, Wn.

United States of America,  
Eastern District of Washington,—ss.

John Scott and W. H. Dickson, being first duly sworn, each for himself and not one for the other, deposes and says he is one of the receivers of the Omak Warehouse & Storage Company; that he has read the above and foregoing answer, knows the contents thereof and the allegations therein contained are true as he verily believes.

JOHN SCOTT.  
W. H. DICKSON.

Subscribed and sworn to before me this 3d day of May, 1921.

P. D. SMITH,

Notary Public, Residing at Okanogan, Wn.

Filed in the U. S. District Court, Eastern District of Washington. May 5, 1921. Wm. H. Hare, Clerk. By H. J. Dunham, [16]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE CO, a Corporation, Alleged Bankrupt.

**Motion to Dismiss Answer to Creditors' Petition.**

Come now the petitioning and intervening creditors herein and move the Court for dismissal of the answer to creditors' petition filed by the Omak Warehouse & Storage Company and John Scott and W. H. Dickson, Receivers thereof, on the ground and for the reason that the said answer does not state facts sufficient to constitute a defense.

If the foregoing motion should be denied, the said petitioning creditors and intervening creditors move to strike the affirmative matters set forth in said answer on the ground and for the reason that



the same does not constitute a defense.

E. D. CLOUGH,

FABIAN B. DODDS,

Attorneys for Petitioning and Intervening Creditors.

Filed in the U. S. District Court, Eastern District of Washington. May 18, 1921. Wm. H. Hare, Clerk. H. J. Dunham, Deputy. [17]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

**Memorandum Opinion.**

P. D. SMITH, Attorney for Bankrupt and Receivers.

DODDS & DODDS, Attorneys for Petitioners.

RUDKIN, District Judge.—The involuntary petition in this case charges the commission of an act of bankruptcy in that receivers were appointed by order of one of the state courts on the ground of the insolvency of the bankrupt, whereupon all of the assets and property of the bankrupt were put in charge of such receivers. The petition was filed on April 22, 1921, and the act of bankruptcy was committed on the 12th day of January, 1921, or

within the preceding four months. The answer of the bankrupt alleges in substance that temporary receivers were appointed for the bankrupt on the 2d day of December, 1920, without notice, accompanied by an order requiring the bankrupt to show cause on the 7th day of December, 1920, why the appointment of such receivers should not be made permanent. On the 7th day of December, 1920, a further order was entered reciting that no proper service of the previous order had been made, and continuing the temporary receivership until the 11th day of December, 1920, on which last mentioned date the bankrupt was required to appear and show cause why the receivers should not be made permanent. By stipulation of counsel the hearing was continued from December 11th, until December 17th, and again until January 12, 1921, on which date permanent receivers were appointed upon the ground of insolvency.

The question arises when were receivers put in charge of the property of the bankrupt under the laws of the state [18] because of insolvency. Section 3a of the Bankruptcy Act provides:

“Acts of bankruptcy by a person shall consist of his having \* \* \* (4) made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state, of a territory, or of the United States.”

Subdivision b of the same section provides that a petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act.

Section 741, Rem. & Bal. Codes and Statutes of Washington, provides that a receiver may be appointed by the Court. "5. When a corporation has been dissolved or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights."

In 1 Loveland on Bankruptcy, page 335, it is said:

"It is immaterial whether the receiver is a temporary or a permanent receiver."

There is at least apparent conflict of authority on this question, but it seems to me the better rule is that there is no appointment of a receiver on the ground of insolvency until there is either an admission of insolvency by the bankrupt or a formal adjudication of insolvency after notice. Under the laws of this state the power of a Court to appoint a receiver without notice is very limited.

Cole vs. Price, 22 Wash. 18.

Haggard vs. Sanglin, 31 Wash. 165.

State ex rel. Washington Match Co. vs. Superior Court, 34 Wash. 123.

In discussing the meaning of this provision of the Bankruptcy Act, in Zugalla vs. International Mercantile Agency, 142 Fed. 928, Judge Gray, one of the ablest of the Circuit Judges, speaking of a temporary receivership such as this, said:

“It is manifest that the restraining order and the appointment of a receiver, covered by this order, are not the injunction and appointment of a receiver contemplated by the [19] statute, after a judicial inquiry as to the alleged statutory insolvency of the corporation. The order was evidently made under the general equity powers of the Court of Chancery, and not under statutory authority. It was made, both as a restraining order and as an appointment of a receiver, to preserve in *statu quo* the property and assets of the corporation, in the custody of an officer of this court, until action could be taken under the statute, and the judicial inquiry contemplated by the statute and provided for in the preliminary order itself, with due notice to all parties in interest. Again, the Court said in speaking of the final order:

“The appointment of a receiver thus made was, in the words of the section of the bankrupt act under consideration, a receiver who had been put in charge of the property of the corporation because of its insolvency, under the laws of a state. To be put in charge, ‘because of the insolvency’ of a corporation, must mean because of judicially determined insolvency. To hold otherwise, would do violence to the settled and orderly procedure of judicial tribunals, and would also lead to absurd consequences not to be unnecessarily involved. The law requires that the appointment of a receiver, in

order to constitute an act of bankruptcy, must be made by reason of the existence of a certain fact, to wit, the insolvency of a corporation. The existence of such a fact must necessarily be determined, either by the admission of the party or by evidence adduced in a judicial inquiry duly had. In the *ex parte* order made for a temporary receiver, or custodian, on the 25th of August, it is distinctly stated that the same was made because insolvency was charged, not because insolvency existed. The appointment of a receiver, because of insolvency, without which no act of bankruptcy has been committed, has not occurred, and that this is so appears plainly, palpably and unequivocally from the record of the case, in which the order was made. If this were otherwise, the absurd result might well have happened, that after the adjudication of bankruptcy, because of the temporary appointment of a receiver, on August 25th, on the hearing of the rule to show cause on September 6th, the requisite jurisdictional insolvency might not have been shown to the New Jersey chancellor, in consequence of which no receiver could have been appointed under the New Jersey statute."

True, the *ex parte* order made in this case on the 2d day of December recites that it appears from the verified complaint that the defendant is insolvent, but such a recital without hearing or opportunity to be heard is of no avail.

I am therefore of opinion that the act of bankruptcy was committed within the four month period, and the motion to strike the answer must be sustained.

Filed in the U. S. District Court, Eastern District of Washington. May 26, 1921. W. H. Hare, Clerk. [20]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Alleged Bankrupt.

**Order Granting Motion to Dismiss Answer to Creditors' Petition.**

This cause coming on regularly to be heard this day, on the petitioning creditors' motion to strike the answer filed by the bankrupt and receivers, and the Court having heard the argument of counsel,

IT IS ORDERED: That said motion be and the same is hereby granted and the answer is hereby stricken.

Done in open court this 31st day of May, 1921.

FRANK H. RUDKIN,

District Judge.

Filed in the U. S. District Court, Eastern District of Washington. May 21, 1921. W. H. Hare, Clerk. [21]



In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE CO, a Corporation, Alleged Bankrupt.

**Petition of Holter Hardware Company et al. to Intervene.**

To the Hon. FRANK H. RUDKIN, Judge of the District Court of the United States, for the Eastern District of Washington.

The petition of Holter Hardware Company, a corporation, the Standard Oil Company, a corporation, and John W. Graham & Company, a corporation, respectfully alleges and shows on information and belief:

I.

That your petitioner, Holter Hardware Company, is a corporation organized under the laws of the State of Washington, with its principal place of business at Spokane, and is a creditor of the above-named Omak Warehouse & Storage Company, having a provable claim against same, amounting to \$234.60, in excess of securities held by it. The nature and amount of your petitioner's claim is for goods, wares and merchandise sold and delivered.

That your petitioner, Standard Oil Company, is a corporation organized under the laws of the State of California, doing business in the city of Spokane, and is a creditor of the above-named Omak

Warehouse & Storage Company, having a provable claim against same, amounting to \$427.79, in excess of securities held by it. The nature and amount of your petitioner's claim is for goods, wares, and merchandise sold and delivered.

That your petitioner, John W. Graham & Company, is a corporation organized under the laws of the State of Washington, with its principal place of business at Spokane, and is a creditor of the above-named Omak Warehouse & Storage Company, having a [22] provable claim against, same, amounting to \$11.34, in excess of securities held by it. The nature and amount of your petitioner's claim is for goods, wares and merchandise sold and delivered.

## II.

That on or about the — day of April, 1921, an involuntary petition in bankruptcy was filed in the office of the clerk of this court, praying that the Omak Warehouse & Storage Company be adjudged an involuntary bankrupt. That said petition is still pending and your petitioners desire to join in said petition that the said Omak Warehouse & Storage Company be adjudged an involuntary bankrupt.

WHEREFORE, your petitioners respectfully prays that he be allowed to join in the said petition that the Omak Warehouse & Storage Company be adjudged a bankrupt, within the purview of the



Bankruptcy Act of 1898, and the amendments thereof.

HOLTER HARDWARE COMPANY.

By W. H. DEAN,

Its Mgr. & V. P.

STANDARD OIL COMPANY.

By H. A. LEHNHARDT,

Its Dist. Sales Mgr.

JOHN W. GRAHAM & COMPANY.

By J. W. GRAHAM,

Its President.

DODDS & DODDS,

E. D. CLOUGH,

Attorneys for Petitioners. [23]

State of Washington,  
County of Spokane,—ss.

W. H. Dean, being first duly sworn, deposes and upon his oath says: That he is the Mgr. and Vice-president of the Holter Hardware Company, petitioner above named; that the statement of facts contained in the foregoing petition is true according to his best knowledge, information and belief.

W. H. DEAN.

Subscribed and sworn to before me this 14th day of May, 1921.

BENJAMIN HAMMOND,

Notary Public, Residing at Spokane.

State of Washington,  
County of Spokane,—ss.

H. A. Lehnhardt, being first duly sworn, deposes and upon his oath says: That he is the Dist. Sales

Mgr. of the Standard Oil Company, petitioner above named; that the statement of facts contained in the foregoing petition is true according to his best knowledge, information and belief.

H. A. LEHNHARDT.

Subscribed and sworn to before me this 14th day of May, 1921.

BENJAMIN HAMMOND,  
Notary Public, Residing at Spokane.

State of Washington,  
County of Spokane,—ss.

John W. Graham, being first duly sworn, deposes and upon his oath says: That he is the president of the John W. Graham & Company, petitioner above named; that the statement of facts contained in the foregoing petition is true according to his best knowledge, information and belief.

JOHN W. GRAHAM.

Subscribed and sworn to before me this 14th day of May, 1921.

BENJAMIN HAMMOND,  
Notary Public, Residing at Spokane.

Filed in the U. S. District Court, Eastern District of Washington. May 16, 1921. W. H. Hare, Clerk. [24]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

**IN BANKRUPTCY—No. 3618.**

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

**Petition of Columbia Valley Lumber Co. to Intervene.**

To the Honorable FRANK H. RUDKIN, Judge of the District Court of the United States for the Eastern District of Washington:

The petition of the Columbia Valley Lumber Co., a corporation, organized and doing business under the laws of the State of Washington, having its principal office at Seattle, Wash., and Citizens State Bank, a banking corporation, organized and doing business under the laws of the State of Washington, having its principal place of business at Omak, Wash., and F. A. De Voss, of Omak, Wash., respectfully shows:

FIRST. That your petitioners are creditors of the above-named Omak Warehouse and Storage Co., a corporation having provable claims against said Omak Warehouse & Storage Co. in the aggregate in excess of securities held by them \$24,920.05, besides interest.

That the nature of your petitioners' claims is as follows:

(a) The claim of your petitioner, Columbia Valley Lumber Co., a corporation, is as follows:

For merchandise consisting principally of lumber and building material, sold and delivered to the alleged bankrupt above named at its special instance and request during the year 1920, amounting in all to the sum of \$1,035.80, no part of which has been paid, except the sum of \$211.75, leaving due and unpaid the sum of \$824.05, together with interest thereon from Jan. 1, 1921, at the rate of 6 per cent per annum.

(b) The claim of your petitioner, Citizens' State Bank, Omak, Wash., a corporation, is for money loaned to said Omak Warehouse & Storage Co., as evidenced by six certain promissory notes bearing interest at the rate of 10 per cent per annum upon \$10,000 of said amount from Sept. 17th, 1920, and interest upon \$5,000 at the same rate from Sept. 8th, 1920; upon the sum of \$5,000 from [25] Sept. 10, 1920, and upon the sum of \$450 from Nov. 16th, 1920, all of which sums are wholly due and unpaid though due demand has been made.

(c) The claim of your petitioner, F. A. De Voss, is for goods, wares and merchandise sold and delivered to the said Omak Warehouse & Storage Co. between April 7th, 1920, and March 10th, 1921, at its special instance and request, amounting in all to the sum of \$206.60, no part of which has been paid except the sum of \$50.00, leaving a balance of \$156.60.

SECOND. That on or about the 22d day of April, 1921, C. E. Blackwell & Co., a Corporation, Omak Trading Co., a corporation, and Val Middleton filed in the office of the clerk of this court a petition that the Omak Warehouse & Storage Co., a corporation,

be adjudged an involuntary bankrupt. That said petition is still pending and that your petitioners desire to join in the petition of the said C. E. Blackwell & Co., a corporation, Omak Trading Co., and Val Middleton, that the said Omak Warehouse & Storage Co. be adjudged a bankrupt within the purview of the bankruptcy act of 1898 and the amendments thereof.

And the petitioners further respectfully pray that in case of reference of this matter, that it be referred to the Referee in Bankruptcy at Spokane, Wash.

COLUMBIA VALLEY LUMBER COMPANY.

By R. L. WRIGHT,  
Mgr. Omak Yard.

CITIZENS' STATE BANK,  
Omak, Wash.

By W. E. WEEKS,  
Cashier.

F. A. DE VOS,  
Petitioners.

EUGENE D. CLOUGH,  
DODDS & DODDS,

Attorneys for Petitioners. [26]

State of Washington,  
County of Okanogan,—ss.

R. L. Wright, being first duly sworn, deposes and says that he is the manager of the Columbia Valley Lumber Co., a corporation, one of the petitioning creditors mentioned and described in the foregoing petition and as such, has charge of the hand-

ling and collection of accounts for said corporation at Omak, Wash., and is the person best able to verify the facts in regard to the foregoing claim, and makes the oath that the statements of fact contained in the foregoing petition are true according to the best of his knowledge, information and belief.

R. L. WRIGHT.

Subscribed and sworn to before me this 12th day of May, 1921.

E. D. CLOUGH,

Notary Public in and for the State of Washington,  
Residing at Omak, Wash.

State of Washington,  
County of Okanogan,—ss.

W. E. Weeks, being first duly sworn, deposes and says that he is the cashier of the Citizens' State Bank, Omak, Wash., a corporation, one of the petitioning creditors mentioned and described in the foregoing petition, that said corporation has no treasurer, but that his duties most nearly correspond to those of such officer, and makes solemn oath that the statements of fact contained in the foregoing petition are true according to the best of his knowledge, information and belief.

W. E. WEEKS.

Subscribed and sworn to before me this 12th day of May, 1921.

E. D. CLOUGH,

Notary Public in and for the State of Washington,  
Residing at Omak, Wash. [27]



State of Washington,  
County of Okanogan,—ss.

F. A. De Voss, one of the petitioning creditors mentioned and described in the foregoing petition, does hereby make solemn oath that the statements of fact contained in the foregoing petition are true, according to the best of his knowledge, information, and belief.

F. A. DE VOS.

Subscribed and sworn to before me this 12th day of May, 1921.

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Notary Public in and for the State of Washington,  
Residing at Omak, Wash.

Filed in the U. S. District Court, Eastern District of Washington. May 16, 1921. W. H. Hare, Clerk. [28]

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In the District Court of the United States for the  
Eastern District of Washington, Northern  
Division.

IN BANKRUPTCY.—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Alleged Bankrupt.

**Order Allowing Intervention.**

The Columbia Valley Lumber Company, a Corporation, the Citizens State Bank, a banking corporation, F. A. De Voss, the Holter Hardware

Company, a corporation, the Standard Oil Company, a corporation, and John W. Graham & Company, a corporation, having filed their verified petitions praying that they be joined as petitioning creditors in the above-entitled proceeding, and upon the petition in bankruptcy and all proceedings heretofore had herein, and upon motion of E. B. Clough and Dodds & Dodds, attorneys for said petitioners,—

IT IS ORDERED: That said petitioners be and they hereby are allowed to intervene herein and are hereby joined and made petitioning creditors in the petition praying for the involuntary adjudication of the Omak Warehouse & Storage Company, a corporation, filed in the office of the clerk of the above-entitled court, on the 16th day of April, 1921.

FRANK H. RUDKIN,

District Judge.

Filed in the U. S. District Court, Eastern District of Washington. May 16, 1921. W. H. Hare, Clerk. [29]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY.—No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

**Adjudication of Bankruptcy.**

At Spokane, in said District, on the 8th day of June, 1921, before the Hon. FRANK H. RUDKIN, Judge of said Court in Bankruptcy.



The petition of C. E. Blackwell & Co., a corporation, Omak Trading Company, a corporation, and Val Middleton, that the Omak Warehouse & Storage Company, a corporation, be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered and the said Omak Warehouse & Storage Company and John Scott and W. H. Dickson, Receivers thereof, having filed an answer to said petition and the Court having heretofore granted petitioners' motion to strike said answer from the files, and the said alleged bankrupt and the Receivers thereof having refused and failed to plead further the said Omak Warehouse & Storage Company, a corporation, is hereby declared and adjudged bankrupt accordingly.

WITNESS the Hon. FRANK H. RUDKIN, Judge of said Court, and the seal thereof at Spokane, in said District, on the 8th day of June, 1921.

W. H. HARE,  
Clerk.

Enter: FRANK H. RUDKIN,  
Judge.

Filed in the U. S. District Court, Eastern District of Washington. June 8, 1921. W. H. Hare, Clerk. [30]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

**Petition for Appeal.**

The above-named bankrupt, Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson, Receivers thereof, feeling themselves aggrieved by the order of Court made and entered herein on the 8th day of June, 1921, in the above-entitled proceeding in bankruptcy, do hereby appeal from the said order declaring and adjudging the said Omak Warehouse and Storage Company, a corporation, a bankrupt, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors filed herein, and pray that this appeal be allowed, and that Citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said order was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California.

Dated this 11th day of June, A. D. 1921.

P. D. SMITH,

CHAS. H. LEAVY,

Attorneys for Omak Warehouse & Storage Co., and  
John Scott and W. H. Dickson, Receivers.

Filed in the U. S. District Court, Eastern District of Washington. June 13, 1921. W. H. Hare, Clerk. [31]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

**Order Allowing Appeal.**

The foregoing petition of the Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson, receivers thereof, for an appeal from that certain order made and entered in the above-entitled proceeding in bankruptcy on the 8th day of June, 1921, to the United States Circuit Court of Appeals for the Ninth Circuit, is hereby granted and the appeal allowed, and the bond on appeal is fixed in the sum of \$300.00.

Done in open court this 11th day of June, A. D. 1921.

FRANK H. RUDKIN.

Filed in the U. S. District Court, Eastern District of Washington. June 13, 1921. W. H. Hare, Clerk. [32]

In the District Court of the United States for the  
Eastern District of Washington, Northern  
Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STOR-  
AGE COMPANY, a Corporation, Bankrupt.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, the Omak Warehouse and Storage Com-  
pany, a corporation, and John Scott and W. H.  
Dickson, receivers thereof, as principals, and the  
National Surety Company, a body corporate of  
New York and duly incorporated under the laws of  
the said State of New York and authorized to  
transact the business of surety in the State of  
Washington, as surety, executing this bond in be-  
half of said principals, are jointly and severally  
held and firmly bound unto C. E. Blackwell & Com-  
pany, a corporation, the Omak Trading Company,  
a corporation, and Val. Middleton, petitioners in  
the above-entitled cause, their heirs, executors,  
administrators and assigns, in the full sum of Three  
Hundred Dollars (\$300.00), for the payment of  
which sum, well and truly to be made, we bind our-  
selves, our and each of our successors, heirs, exe-  
cutors, administrators and assigns, jointly and  
severally firmly by these presents.

Sealed with our seals and dated this 16th day of  
June, A. D. 1921,

THE CONDITION of this obligation is such that

WHEREAS, in the above-entitled court and action, an order was entered on the 8th day of June, 1921, declaring and adjudging the said Omak Warehouse & Storage Company, a corporation a bankrupt, and the said Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson receivers thereof, having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit the [33] said order to continue in full force pending the determination of said cause on appeal, and a citation directed to the said C. E. Blackwell and Company, a corporation, and Omak Trading Company, a corporation, and Val. Middleton is about to be issued, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, if the said Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson shall prosecute their said appeal to effect and answer all the damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation is to be void; otherwise to re-

main in full force and virtue.

OMAK STORAGE & WAREHOUSE CO.

JOHN SCOTT,

W. H. DICKSON,

Receivers.

By CHAS. H. LEAVY,

Their Attorney Herein.

NATIONAL SURETY COMPANY.

By JAMES O. BROWN,

Resident Vice-president.

[Seal]

By G. B. FERGUSON,

Resident Assistant Secretary.

Filed in the U. S. District Court, Eastern District of Washington. June 16, 1921. Wm. H. Hare, Clerk. Eva M. Hardin, Deputy. [34]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE CO. a Corporation, Bankrupt.

**Assignment of Errors.**

Comes now the Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson, receivers thereof, and say that in the order made and entered in the above-entitled proceedings, on the 8th day of June, 1921, there is manifest error, and file the following assignment of errors



committed and happening in the said proceeding upon which they will rely in their appeal from said order:

1. In granting the petition of C. E. Blackwell & Company, a corporation, Omak Trading Company, a corporation, and Val Middleton, and adjudging the said Omak Warehouse and Storage Company, a corporation, a bankrupt.

2. In failing to deny the petition of the said C. E. Blackwell & Company, a corporation, Omak Trading Company, a corporation and Val Middleton to adjudge the said Omak Warehouse and Storage Company, a corporation, a bankrupt.

3. In granting the motion of petitioners to strike the answer of Omak Warehouse and Storage Company, a corporation.

4. In failing to deny the said motion to strike the answer of the said Omak Warehouse and Storage Company, a corporation.

5. In holding that the Omak Warehouse and Storage Company, a corporation, committed an act of bankruptcy within four months next prior to April 22, 1921, the date of filing the petition of C. E. Blackwell & Company, a corporation, Omak Trading Company, a corporation and Val Middleton. [35]

6. In not holding that the appointment of a temporary receiver by the State Court on December 2, 1920, was the act of bankruptcy.

7. In not holding that the order of the State Court on December 7, 1920, continuing the appoint-

ment of the temporary receiver was the time from which the act of bankruptcy would date.

8. In not holding that December 11th, 1920, was the time from which the Act of Bankruptcy would date.

9. In holding that January 12, 1921, the date of the appointment of a permanent receiver by the State Court, was the date fixing the act of bankruptcy.

P. D. SMITH,

CHAS. H. LEAVY,

Attorneys for Omak Warehouse and Storage Company, a Corporation.

Filed June 13, 1921. W. H. Hare, Clerk. [36]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE CO., a Corporation, Bankrupt.

**Citation on Appeal.**

The United States of America,—ss.

The President of the United States to C. E. Blackwell & Company, a Corporation, Omak Trading Company, a Corporation, and Val Middleton, GREETING:

YOU, AND EACH OF YOU, ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the

Ninth Circuit, to be holden at San Francisco, in the State of California, on the 15th day of July, 1921, pursuant to an appeal filed in the office of the clerk of the District Court of the United States for the Eastern District of Washington, in the matter of the Omak Warehouse and Storage Company, Bankrupt, wherein the Omak Warehouse and Storage Company, a corporation, and John Scott and W. H. Dickson, Receivers thereof, are appellants, to show cause, if any there be, why the order adjudging the Omak Warehouse and Storage Company, a bankrupt in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Chief Justice of the Supreme Court of the United States, this 24th day of June, in the year of our Lord, 1921.

FRANK H. RUDKIN,  
District Judge.

Filed in the U. S. District Court, Eastern District of Washington. June 24, 1921. W. H. Hare, Clerk. [37]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3618.

In the Matter of OMAK WAREHOUSE & STORAGE COMPANY, a Corporation, Bankrupt.

**Praeipce for Transcript of Record**

To the Clerk of the United States District Court  
for the Eastern District of Washington, North-  
ern Division.

YOU ARE HEREBY REQUESTED, in pre-  
paring your return to the citation on appeal in the  
above-entitled cause, to include therein the fol-  
lowing:

1. Creditors' petition;
2. Answer to creditors' petition;
3. Motion to dismiss;
4. Memorandum opinion;
5. Order dismissing answer;
6. Petitions to intervene (2);
7. Order allowing intervention;
8. Order of adjudication;
9. Petition for appeal;
10. Order allowing appeal;
11. Bond on appeal;
12. Assignment of errors;
13. Citation;

which comprise all of the papers, records and  
other proceedings which are necessary to the hear-  
ing of the appeal in said matter in the United  
States Circuit Court of Appeals, and that no other  
papers, records or other proceedings than those  
above mentioned are necessary to be included by  
the clerk of said Court in making up his return  
to said citation as a part of such record.

Dated this 20th day of June, A. D. 1921.

P. D. SMITH,

CHAS. H. LEAVY,

Attorneys for the Omak Warehouse & Storage  
Company, John Scott and W. H. Dickson, Re-  
ceivers thereof.

Filed in the U. S. District Court, Eastern Dis-  
trict of Washington. June 24, 1921. W. H. Hare,  
Clerk. [38]

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No. 3618.

In the Matter of OMAK WAREHOUSE & STOR-  
AGE CO., a Corporation, Bankruptcy.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

I, W. H. Hare, Clerk of the United States Dis-  
trict Court for the Eastern District of Washington,  
do hereby certify that the foregoing typewritten  
pages, to be a full, true, correct and complete copy  
of so much of the record, papers, and orders, and  
other proceedings in the above-entitled cause, as  
called for in the praecipe of counsel of record  
herein, as the same remains of record and on file in  
the office of the clerk of said District Court, and  
that the same constitutes the record on appeal to  
the Circuit Court of Appeals for the Ninth Judi-  
cial Circuit, San Francisco, California.

I further certify that I have attached and trans-  
mit the original citation in this cause.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of Eighteen Dollars and 10/100 Dollars, and that the same has been paid by Charles H. Leavy, one of the solicitors for appellant,

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Spokane, in said District, this 27th day of June, 1921.

[Seal]

W. H. HARE,  
Clerk. [39]

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[Endorsed]: No. 3709. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Omak Warehouse and Storage Company, a Corporation, Bankrupt. Omak Warehouse and Storage Company, a Corporation, and John Scott and W. H. Dickson, Appellants, vs. C. E. Blackwell & Company, a Corporation, Omak Trading Company, a Corporation, and Val Middleton, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed June 30, 1921.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.